



**MMCC GUIDANCE:
OWNERSHIP AND CONTROL
REQUIREMENTS**

May 2020

The following guidance is provided to assist medical cannabis businesses to comply with state laws and regulations governing the transfer of ownership or control. This document includes regulatory changes which took effect on May 18, 2020.

This document is not legal advice. It is meant to assist licensed medical cannabis businesses with understanding ownership and control requirements, and to comply with state laws and regulations. Please consult an attorney if you have any questions regarding the legal requirements that apply.

Statutory Limits on Ownership and Control

A person or entity may not have an ownership interest in or control of, including the power to manage or operate, more than:

- 1 medical cannabis grower license (see COMAR 10.62.08.02);
- 1 medical cannabis processor license (see COMAR 10.62.19.02); and/or
- 4 medical cannabis dispensary licenses (see COMAR 10.62.25.02).

Transfer of Ownership

OVERVIEW

A controlling ownership interest in a medical cannabis license may not be transferred unless the entity awarded the license has been physically and actively engaged in the cultivation, processing, or dispensing of medical cannabis for at least 3 years.

A transfer of an ownership interest in a medical cannabis license must be approved by the Commission, *unless* it is a transfer of an ownership interest of less than 5 percent in a medical cannabis license that is held by a business entity with publicly traded stock.

- **Transfer of less than 5 percent of a privately held company:** Submit a Request to Transfer Ownership Interest.
- **Transfer of more than 5 percent of any business entity:**
 1. Submit a Request to Transfer Ownership Interest, accompanied by the most recent three tax returns filed by the prospective transferee.
 2. Provide the criminal history record information for the prospective transferee. “Criminal history record information” consists of the results of a fingerprint check through Maryland Criminal Justice Information Services (CJIS) and the results of a fingerprint check through the Federal Bureau of Investigation (FBI). More information on submitting fingerprints to CJIS and the FBI is available on the Maryland Department of Public Safety and Correctional Services website (linked [here](#)).

Prior to the transfer an ownership interest in a medical cannabis license, the transferee must pay a fee to the Commission.

- Business Entity Fee: \$7,000.
- Individual Fee: \$500.

A transferee is not required to pay a fee for a transfer of less than 5 percent ownership interest in a medical cannabis license that is held by a business entity with publicly traded stock.

Definition of “ownership”

COMAR 10.62.01(B)(29): “Owner” means a person or entity with an ownership interest.

COMAR 10.62.01(B)(30): “Ownership interest” means an equity interest in a licensed grower, processor, or dispensary, including in its shares or stock.

Restriction on transferring ownership of a medical cannabis license

Health-General Article, §13-3311.1, Annotated Code of Maryland prohibits an entity that was awarded a medical cannabis license from transferring ownership of that license unless the entity has been actively engaged in the cultivation, processing, or dispensing of medical cannabis for at least 3 years. A licensee is considered to become actively engaged in the cultivation, processing, or dispensing of medical cannabis on the date it becomes an active user in the State’s seed-to-sale software, METRC.

“Transfer of ownership” of a medical cannabis license means the transfer of a controlling ownership interest in the license. The Commission considers the following to constitute transfer of ownership:

- Transfer of a 100% ownership interest of a license;
- Transfer of more than a 50% ownership interest of a license; or
- Transfer of less than a 50% ownership interest that constitutes a controlling ownership interest (e.g., License X is 60% owned by Investor A and 40% owned by Investor B; a proposed transfer of 20% from Investor A to Investor B would constitute a transfer of a controlling ownership interest).

The Commission will evaluate any request to transfer less than a 50% ownership interest of a medical cannabis license to determine whether it proposes a transfer of ownership.

Requirements to transfer an ownership interest in a medical cannabis license

**** If the licensee is a business entity with publicly traded stock, only a proposed transfer of an ownership interest of 5 percent or more is subject to the requirements described below. ****

An ownership interest in a medical cannabis license may not be assigned or transferred unless:

1. The Commission has received notice of the intent of the owner of the interest, or of the estate of the owner of the interest, to transfer or assign the interest to another party;
2. The Commission approves the transfer or assignment;
3. The transferee has paid the required fee specified in COMAR 10.62.35; and
4. *If the ownership interest is 5 percent or more*, the transferee has provided the criminal history record information and an audited financial statement to the Commission of the transferee.

A transfer or assignment of ownership interest shall be approved if:

1. The Commission receives notice of the intent of the owner of the interest, or of the estate of the owner of the interest, to transfer or assign an ownership interest in a license to another party, in the form prescribed by the Commission;
2. The proposed transfer does not violate Health-General Article, §§13-3301—13-3316, Annotated Code of Maryland (including limitations on the number of grower, processor or dispensary licenses a person or entity may own or control);
3. The transferee has paid the required fee specified in COMAR 10.62.35; and
4. *If the ownership interest is 5 percent or more*:
 - a. The criminal history record information does not violate COMAR 10.62.09.03; and
 - b. The payment of taxes due in any jurisdiction is not in arrears.

The Commission may deny the transfer of an ownership interest in a medical cannabis license:

1. If the transferee is convicted of or pleads nolo contendere to a crime involving moral turpitude, whether any appeal or other proceeding is pending to have the conviction or plea set aside;
2. If the transferee owes payment of taxes in arrears in any jurisdiction; or
3. For other good cause.

** See: COMAR 10.62.08.08 for requirements to transfer ownership interest in a grower license; COMAR 10.62.19.07 for requirements to transfer ownership interest in a processor license; and COMAR 10.62.25.08 for requirements to transfer ownership interest in a dispensary license. **

Fee to transfer an ownership interest in a medical cannabis license

An ownership interest in a medical cannabis license may not be transferred to a business entity unless the transferee has paid a fee of \$7,000 to the Commission.

An ownership interest in a medical cannabis license may not be transferred to a person unless the transferee has paid a fee of \$500 to the Commission.

** See COMAR 10.62.35.01 for transfer of ownership fees. **

Transfer of Control

OVERVIEW

A medical cannabis licensee may not enter into a management agreement unless the Commission has approved the management agreement.

- A request to enter into a management agreement must be submitted via the Request to Transfer Control.
- The Request must be accompanied by:
 1. A copy of the proposed management agreement;
 2. The corporate structure of the proposed management company;
 3. Full disclosure of any medical cannabis license issued by the MMCC that the proposed management company or any of its corporate affiliates has any ownership interest in or control over; and
 4. The most recent three tax returns filed by the prospective management company.

Prior to entering into a management agreement, the entity that will be transferred control over the medical cannabis licensee's operations (the "management company") must:

- Provide the criminal history record information for the prospective management company. The requisite "criminal history record information" consists of the results of a fingerprint check through Maryland Criminal Justice Information Services (CJIS) and the results of a fingerprint check through the Federal Bureau of Investigation (FBI). More information on submitting fingerprints to CJIS and the FBI is available on the Maryland Department of Public Safety and Correctional Services website (linked [here](#)); and
- Pay a fee of \$7,000 to the Commission.

A material change to a management agreement previously approved by the Commission cannot go into effect unless the Commission has approved the material change.

A request for approval of a material change to a management agreement must be submitted via email to reporting.mmcc@maryland.gov. Copies of the previously approved management agreement the proposed amendment must be attached to the email. The Commission may request additional information relevant to its evaluation of whether the proposed amendment is permissible under COMAR 10.62.

Definition of "management agreement"

COMAR 10.62.01(B)(23): "Management agreement" means an agreement between a licensee and a third party under which the third party receives control of the business in exchange for a fee, financial interest, or a percentage of the licensee's revenue.

Obtaining the Commission’s approval of a management agreement

Prior to any management agreement taking effect, a licensee shall submit to the Commission the “required notice,” which includes:

1. A copy of the management agreement;
2. Information detailing any compensation paid in exchange for the management services;
3. Criminal history record information and audited financial statement of the third party providing the management services; and
4. Any other information relevant to the management agreement requested by the Commission.

A management agreement may not take effect unless the Commission has:

1. Received the required notice of the management agreement;
2. Received the \$7,000 fee required under COMAR 10.62.35; and
3. Approved the management agreement.

The Commission may deny a management agreement:

1. If the management agreement constitutes an invalid transfer of an interest in a license;
2. If the criminal history record information or the background investigation reveal the third party providing the management services has been convicted of or pleaded nolo contendere to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside; or
3. For other good cause.

Clarifying what constitutes a “material change” to a management agreement

A change to a management agreement is a “material change” if it alters:

- The individual owners of the management company;
- The individuals in control of the management company;
- The scope of services that the management company is authorized to perform;
- Financial provisions;
- The term of the contract; or
- Provisions relating to the termination or extension of the agreement.

Obtaining the Commission’s approval of a material change to a management agreement

In the case of material change to a management agreement, including a change of ownership or control of the management company, the licensee shall:

1. Provide any relevant records, files, or information to the Commission; and
2. Receive Commission approval prior to the material change to the management agreement taking effect.

If a management agreement transfers control and an ownership interest, the transferee shall only pay the required fee specified in COMAR 10.62.35 once.

**** See: COMAR 10.62.08.13 for management agreement approval requirements for a licensed grower; COMAR 10.62.19.11 for management agreement approval requirements for a licensed processor; and COMAR 10.62.25.12 for management agreement approval requirements for a licensed dispensary. ****

Fee to transfer control of a medical cannabis license

Control of a medical cannabis license may not be transferred to a management company unless the management company has paid a fee of \$7,000 to the Commission.

**** See COMAR 10.62.35.01 for transfer of control fee. ****

Required Organization, Ownership, and Control Disclosures

A licensee shall submit a table of organization, ownership, and control with the Commission:

1. On or before July 1 of each year;
2. Within 10 business days of any change in ownership interest or control; and
3. Upon request by the Commission.

The table of organization, ownership, and control shall identify the management structure, ownership, and control of the licensee, including the:

1. Name of each owner, principal officer, and any other person or entity with the authority to control the licensee;
2. The office or position held, if any; and
3. The percentage of ownership interest, if any.

If the licensee is a business entity with publicly traded stock, the identification of ownership shall include:

1. The name and percentage of ownership interest of each person or entity with ownership of more than 5 percent of the voting shares of the entity, to the extent such information is known or contained in 13D or 13G Securities and Exchange Commission filings; and
2. To the extent known, the names and percentage of interest of ownership of persons who are relatives of one another and who together exercise control over or own more than 10 percent of the voting shares of the entity.

A licensee that is owned or controlled, in whole or in part, by another entity shall disclose to the Commission:

1. The relationship between the licensee and the parent or affiliate; and
2. Each owner, board member, officer, and any other person with control or management authority over those entities owning or controlling the license.

** See: COMAR 10.62.08.12 for ownership and control disclosure requirements for a licensed grower; COMAR 10.62.19.10 for ownership and control disclosure requirements for a licensed processor; and COMAR 10.62.25.11 for ownership and control disclosure requirements for a licensed dispensary. **

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